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TRANSMITTAL
FORM

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Total Number of Pages in This Submission

24

Application Number	10/650,494
Filing Date	August 28, 2003
First Named Inventor	Bradley T. Estes
Art Unit	3775
Examiner Name	James L Swiger III
Attorney Docket Number	MSDI-479/PC457.06

PTO/SB/21 (09-04)

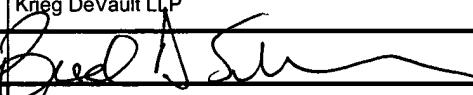
Approved for use through 07/31/2006, OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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ENCLOSURES (Check all that apply)

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<input checked="" type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
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<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
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Remarks		

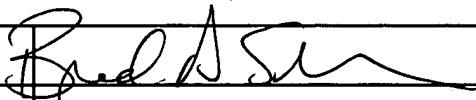
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Krieg DeVault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	March 9, 2009	Reg. No.	45,431

CERTIFICATE OF TRANSMISSION/MAILING

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Typed or printed name

Brad A. Schepers

Date March 9, 2009

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

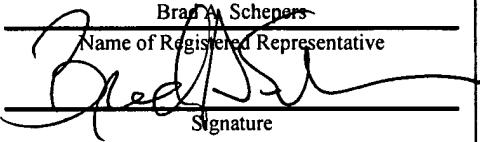
In re patent application of:) Before the Examiner:
Estes et al.) James L Swiger III
)
Application Serial No. 10/650,494) Group Art Unit 3775
)
Filed August 28, 2003) Ref. No. MSDI-479/
) PC457.06
)
LATERALLY EXPANDING) March 9, 2009
INTERVERTEBRAL FUSION DEVICE)

RESPONSE TO NON-FINAL OFFICE ACTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the non-final Office Action dated December 9, 2008, please enter and consider the following amendments and remarks. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:	
March 9, 2009	
_____ Date of Deposit	
Brad A. Schepers	
_____ Name of Registered Representative	
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March 9, 2009	
_____ Date of Signature	

INTRODUCTORY COMMENTS

Claims 2-4, 15, 28-36, 38-44, 46-61, 63-72 and 77-88 were pending in the subject application for the non-final Office Action dated December 9, 2008. Claims 4, 32-34, 47-49, 51-56, 65, 66, 77 and 78 have been withdrawn from consideration. The remaining claims currently stand rejected. In view of the following amendments and remarks, reconsideration and allowance of the subject application are hereby requested.